

SINARLIM SDN BHD

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v.

WAJA DESTINASI (M) SDN BHD

COURT OF APPEAL, PUTRAJAYA

B

LOW HOP BING JCA

SULONG MATJERAIE JCA

RAMLY ALI JCA

[CIVIL APPEAL NO: W-02-113-2008]

5 MAY 2009

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COMPANY LAW: *Winding-up - Petition - Filing of more than one petition at any one time - Whether leave of court required - Whether petition could be filed against company already wound-up - Companies Act 1965, s. 226(3)*

D

COMPANY LAW: *Winding-up - Petition - Whether High Court had jurisdiction to set aside or rescind winding-up order made and perfected by another High Court - Whether should have been dealt by way of appeal to Court of Appeal*

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COMPANY LAW: *Winding-up - Stay of order - Winding-up order stayed wholly by consent - Effect of - Whether petition totally discontinued and terminated*

JURISDICTION: *High Court - Procedure - Winding-up petition - Whether High Court had jurisdiction to set aside or rescind winding-up order made and perfected by another High Court - Whether should have been dealt by way of appeal to Court of Appeal*

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The respondent was wound-up by the Ipoh High Court pursuant to an application by the appellant due to the respondent's failure to settle the amount owed to the appellant ('Ipoh Winding-Up Order'). The case was subsequently transferred to the Kuala Lumpur High Court ('KL-D8 Court') as the respondent had its registered address in Kuala Lumpur. In the KL-D8 Court, the respondent filed a notice of motion for a stay of the Ipoh Winding-Up Order and on the date of its hearing, another officer from the Insolvency Department, Kuala Lumpur, informed the court that there was an earlier winding-up petition *vide* another High Court of Kuala Lumpur ('KL-D2 Winding-Up Order'). The judge of the KL-D8 Court dismissed the application for stay and instead held

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- A that leave was required under s. 226(3) of the Companies Act 1965 ('the Act') to file the Ipoh Winding-Up Petition and went on to set aside the Ipoh Winding-Up Order. Upon discovering that there was actually a stay order of the KL-D2 Winding-Up Order, the appellant then filed an application for further direction and order
- B from the High Court. It was submitted by the appellant that the effect of an order for stay of the KL-D2 Winding-Up Order was a total discontinuance or termination of the winding-up proceedings. However, the learned judge dismissed the application and set aside the Ipoh Winding-Up Order. Hence this appeal. The issues for the
- C court's determination herein were, *inter alia*, (i) whether the learned judge of the KL-D8 court had the jurisdiction to set aside the winding-up order earlier made and perfected by the Ipoh High Court and (ii) whether the learned judge of the KL-D8 Court was right when he set aside the winding up order earlier made by the
- D Ipoh High Court.

Held (allowing the appeal with costs)

Per Ramly Ali JCA delivering the judgment of the court:

- E (1) The KL-D8 Court had already been *functus officio* and the matter was *res judicata* and the court therefore had no jurisdiction to set aside or rescind a winding-up order earlier made and perfected by another High Court. Even if the
- F decision of the Ipoh High Court in granting the winding-up order was wrong, it should have been dealt with by way of appeal to the Court of Appeal, but not to be set aside or rescinded by another High Court of concurrent jurisdiction. (para 17)
- G (2) When the Ipoh Winding-Up Petition was filed, there was no winding-up order in existence against the respondent in any court. The KL-D2 Winding-Up Order was only made about one month after the Ipoh Winding-Up Petition was filed. (para 23)
- H (3) It is a settled legal principle that in law, there is nothing against the filing of more than one winding-up petition against the same company at any one time. No leave was required for the filing of the second and subsequent winding-up petitions if the company has not been wound-up yet. On the facts, the
- I Ipoh Winding-Up Petition was valid in law, even though at the time of filing there was another winding-up petition earlier filed and pending in the KL-D2 High Court. No leave is required for such filing under s. 226(3) of the Act. (paras 25 & 29)

- (4) The KL-D2 Winding-Up Order was stayed wholly by consent and the debt was fully settled. Hence, the KL-D2 Petition has now outlived its purpose and had the effect of being totally discontinued or terminated. The Ipoh High Court can thus make a winding-up order against the respondent after the KL-D2 Winding-Up Order was stayed wholly. (*Vijayalakshmi Devi Nadchatiram v. Jegadevan Nadchatiram & Ors*, foll) (paras 33, 35 & 36) A B
- (5) The decision of the KL-D8 Court ought to be reversed because the learned judge had failed to appreciate the legal effect of the stay order in the KL-D2 Petition granted by the KL-D2 Court, which totally terminated the winding-up order against the respondent. (para 37) C

Bahasa Malaysia Translation Of Headnotes D

Responden telah digulungkan oleh Mahkamah Tinggi Ipoh berikutan satu permohonan oleh perayu atas kegagalan responden menyelesaikan jumlah yang dihutang kepada perayu ('Perintah Penggulungan Ipoh'). Kes tersebut kemudian dipindahkan ke Mahkamah Tinggi Kuala Lumpur ('Mahkamah KL-D8') kerana responden mempunyai alamat berdaftaranya di Kuala Lumpur. Di Mahkamah KL-D8, responden memfailkan Notis Usul untuk penangguhan Perintah Penggulungan Ipoh dan pada tarikh perbicaraan Notis Usul tersebut, seorang lagi pegawai Jabatan Insolvensi, Kuala Lumpur, memberitahu mahkamah bahawa terdapat petisyen penggulungan sebelum ini melalui satu lagi Mahkamah Tinggi Kuala Lumpur ('Perintah Penggulungan KL-D2'). Hakim Mahkamah KL-D8 menolak permohonan untuk penangguhan tersebut dan sebaliknya memutuskan bahawa kebenaran diperlukan di bawah s. 226(3) Akta Syarikat 1965 ('Akta') untuk memfailkan Petisyen Penggulungan Ipoh dan terus mengenyepikan Perintah Penggulungan Ipoh. Selepas mendapat tahu bahawa sebenarnya terdapat perintah penangguhan Perintah Penggulungan KL-D2, perayu kemudian memfailkan permohonan untuk arahan dan perintah lanjut daripada Mahkamah Tinggi. Perayu berhujah bahawa kesan perintah penangguhan Perintah Penggulungan KL-D2 adalah pemberhentian atau pembatalan prosiding penggulungan tersebut. Walaubagaimanapun, hakim yang bijaksana menolak permohonan tersebut dan mengenyepikan Perintah Penggulungan Ipoh. Maka rayuan ini. Isu-isu untuk I

- A dipertimbangkan oleh mahkamah di sini adalah antara lain:
(i) sama ada hakim Mahkamah KL-D8 yang bijaksana mempunyai bidangkuasa untuk mengenenpikan perintah penggulangan yang telah diberikan dan dilaksanakan oleh Mahkamah Tinggi Ipoh; dan (ii)
B sama ada hakim Mahkamah KL-D8 yang bijaksana betul apabila beliau mengenenpikan perintah penggulangan yang dibuat sebelum ini oleh Mahkamah Tinggi Ipoh.

Diputuskan (membenarkan rayuan dengan kos)

Oleh Ramly Ali HMR menyampaikan penghakiman mahkamah:

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(1) Mahkamah KL-D8 telahpun *functus officio* dan perkara tersebut adalah *res judicata* dan mahkamah oleh itu tidak mempunyai bidang kuasa untuk mengenenpikan atau membatalkan perintah penggulangan yang dibuat dan dilaksanakan sebelum ini oleh
D Mahkamah Tinggi yang lain. Walaupun keputusan Mahkamah Tinggi Ipoh dalam membenarkan perintah penggulangan tersebut adalah salah, ia sepatutnya diselesaikan melalui rayuan ke Mahkamah Rayuan, tetapi bukan diketepikan atau
E dibatalkan oleh satu lagi Mahkamah Tinggi dengan bidang kuasa setaraf.
(2) Apabila Petisyen Penggulangan Ipoh difailkan di mahkamah, tidak wujud perintah penggulangan terhadap responden di mana-mana mahkamah. Perintah Penggulangan KL-D2 hanya
F dibuat lebih kurang sebulan selepas Petisyen Penggulangan Ipoh difailkan.
(3) Adalah prinsip undang-undang matan bahawa dari segi undang-undang, tidak ada apa-apa halangan terhadap pemfailan lebih
G daripada satu petisyen penggulangan terhadap syarikat yang sama pada satu-satu masa. Tiada kebenaran diperlukan untuk pemfailan petisyen penggulangan yang kedua dan seterusnya jika syarikat tersebut belum digulungkan lagi. Di atas fakta, Petisyen Penggulangan Ipoh adalah sah dari segi undang-undang, walaupun pada masa pemfailan terdapat satu lagi
H petisyen penggulangan awal difailkan dan menunggu bicara di Mahkamah Tinggi KL-D2. Kebenaran tidak diperlukan untuk pemfailan sedemikian di bawah s. 226(3) Akta.

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- (4) Perintah Penggulangan KL-D2 ditangguhkan sepenuhnya dengan persetujuan dan hutang tersebut telah diselesaikan kesemuanya. Maka, Petisyen KL-D2 tidak mempunyai tujuan dan mempunyai kesan diberhentikan atau dibatalkan secara keseluruhannya. Mahkamah Tinggi Ipoh oleh itu boleh memberikan perintah penggulangan terhadap responden selepas Perintah Penggulangan KL-D2 ditangguhkan sepenuhnya. (*Vijayalakshmi Devi Nadchatiram v. Jegadevan Nadchatiram & Ors*, diikuti) A B
- (5) Keputusan Mahkamah KL-D8 mesti diakas kerana hakim yang bijaksana telah gagal menghargai kesan undang-undang perintah penggulangan di dalam Petisyen KL-D2 yang diberikan oleh Mahkamah KL-D2, yang sama sekali membatalkan perintah penggulangan terhadap responden. C

Case(s) referred to: D

- Krexite Holdings Pty Ltd v. Widdows* [1974] VR 689 (*refd*)
- Ladli Prasad Jaiswal v. Karnal Distillery Co Ltd* [1954] Comp Cas 77 (*fol*)
- Maril-Rionebel (M) Sdn Bhd & Anor v. Perdana Merchant Bankers Bhd & Other Appeals* [2001] 3 CLJ 248 CA (*fol*)
- Perdana Merchant Bankers Bhd v. Maril Rionebel (M) Sdn Bhd* [1995] 1 LNS 308 HC (*refd*) E
- Re Cosmopolitan Life Association* [1893] 15 on PR 185 (*refd*)
- Re European Banking Company: Ex parte Baylis* [1866] LR 2 Eq 521 (*fol*)
- Re London Marine Insurance Association* [1896] LR Eq 176 (*refd*)
- Re Michael P Georges Co Ltd* [1948] OR 78 (*refd*)
- Re Mid East Trading Ltd* [1998] 1 All ER 577 (*refd*) F
- Re Overend, Gurney and Co Ltd, ex parte Oakes and Peek (No 2)* [1876] 36 LJ Ch 413 (*refd*)
- Re Reliance Properties Ltd* [1951] 2 All ER 327 (*refd*)
- Sri Hartamas DVPT Sdn Bhd v. MBf Finance Bhd* [1991] 3 CLJ 2078; [1991] 1 CLJ (Rep) 436 SC (*refd*) G
- Vijayalakshmi Devi Nadchatiram v. Jegadevan Nadchatiram & Ors* [1995] 2 CLJ 392 CA (*fol*)

Legislation referred to:

- Companies Act 1965, ss. 218(1)(e), 226(3), 243(1), 253
- Companies (Winding-Up) Rules 1972, r. 32(1)(d) H

Other source(s) referred to:

- Derek French, "Applications To Wind Up Companies", 2nd edn, p 289 para 4.4.3
- Halsbury's Laws of England*, 4th edn reissue, para 1528 I

- A *For the appellant - Leong Kok Keong (Mohamd Khairil Abidin with him);
M/s Kean Chye & Sivalingam
For the respondent - Shamsul Zakri Zakaria; FC, Department of Insolvency
Malaysia*
- B *[Appeal from High Court Kuala Lumpur; Companies (Winding-up) Petition
No: D8-28-570-2007]*
- [Editor's note: For the High Court judgment, please see Sinarlim Sdn Bhd v.
Waja Destinasi (M) Sdn Bhd [2008] 1 LNS 72.]*
- C *Reported by S Barathi*

JUDGMENT

Ramly Ali JCA:

- D [1] This is an appeal against the decision of the learned judge of
the Kuala Lumpur High Court (KL-D8) dated 17 January 2008 in
setting aside the winding-up order earlier made by the Ipoh High
Court on 21 June 2007 *vide* the Ipoh High Court Companies
E (Winding-Up) Petition No: 28-1-2007 (Ipoh Winding-Up) against
the respondent.
- Factual Background**
- F [2] The appellant is a sub-contractor for the respondent who was
the main contractor for the Flood Mitigation Works carried out for
the benefit of the Department of Irrigation and Drainage Malaysia,
at Kampung Gajah, Teluk Intan, Perak Darul Ridzuan.
- G [3] It is not in dispute that the respondent owed the appellant a
sum of RM479,825.52. The appellant then issued a statutory notice
pursuant to s. 218(1)(e) of the Companies Act 1965 and served it
on the respondent on 5 October 2006. The respondent did not pay
the debt even after expiry of the 21 days.
- H [4] On 5 January 2007, the appellant filed a winding up Petition
No. 28-1-2007 at the Ipoh High Court and the petition was fixed
for hearing on 21 June 2007. The said petition was duly served on
the respondent on 23 February 2007. The Ipoh High Court then
issued a Registrars' Certificate of Due Compliance pursuant to
I r. 32(1)(d) of the Companies (Winding-Up) Rules 1972 on
30 May 2007.

[5] On the date of hearing of the petition on 21 June 2007 the respondent failed to turn up even though the petition was duly served on it. The Ipoh High Court then proceeded to hear the submissions on merits by the appellant's counsel and after the official receiver from the Insolvency Department, Ipoh Office confirmed that the papers are in order, the learned judge then ordered that the respondent be wound up.

[6] The Ipoh High Court was also informed on the hearing date that an official search with the Registrar of Companies does not disclose existence of any winding-up order on the respondent company and there is also no other winding-up notice in the Ipoh Official Receiver's records on the date of hearing.

[7] After the winding-up order was granted by the Ipoh High Court, the official receiver then requested that the matter be transferred to the jurisdiction of Kuala Lumpur High Court as the respondent has its registered address in Kuala Lumpur. This case was subsequently transferred to the Kuala Lumpur High Court (Commercial Division) and registered as the Companies (Winding-Up) Petition No. D8-28-570-2007 (KL-D8).

[8] On 5 July 2007, the respondent filed a Notice of Appeal to the Court of Appeal *vide* Court of Appeal Civil Appeal No. A-02-674-2007 through Messrs Shamsuddin & Co against the winding-up order made by the Ipoh High Court.

The Proceedings In The Kuala Lumpur High Court

[9] In the Kuala Lumpur High Court, the respondent filed a notice of motion dated 20 July 2007 (encl. 18) for a stay order against the Ipoh Winding Up Order dated 21 June 2007. On 24 October 2007, the date of hearing of the respondent's notice of motion for a stay order, a different officer from the Insolvency Department, Kuala Lumpur office, informed the court that there was an earlier winding up petition *vide* Kuala Lumpur High Court Companies (Winding Up) Petition No. D2-28-372-2005 (D2 Petition).

[10] After hearing oral submissions, on the same day on 24 October 2007, the learned judge of the Kuala Lumpur High Court (KL-D8) dismissed the respondent's motion for stay. Instead the learned judge on his own volition concluded that once there is in existence a winding-up petition in D2 court, it is impossible to have another winding-up proceeding against the same company in

A the Ipoh High Court. Therefore the learned judge concluded that leave is required to file the Ipoh Winding-Up Petition under s. 226(3) of the Companies Act 1965. Since no leave was given in the Ipoh High Court for the petition therein the learned judge then set aside the Ipoh High Court winding up order.

B [11] On the same day (24 October 2007) the learned judge also directed the official receiver to file a written report within one month from 24 October 2007 to confirm whether there was an earlier winding-up order granted on 2 February 2007 by the D2 court against the respondent.

C [12] Since the official receiver failed to observe the directions given by the learned judge on 24 October 2007, the appellant then filed a summons in chambers dated 10 December 2007 (encl. 39) for further direction and order from the High Court as the
D appellant discovered that there was actually a stay order of the D2 winding-up order granted by the D2 court on 15 June 2007 which was never disclosed to the learned judge on 24 October 2007.

E [13] During hearing of the appellant's said summons in chambers dated (encl. 39) on 17 January 2008 before the Kuala Lumpur High Court (KL-D8), the appellant's solicitors submitted that the effect of an order for stay of the D2 winding-up order is a total discontinuance or termination of the winding-up proceedings. The learned judge however disagreed and dismissed encl. 39 with costs
F and at the same time on his own volition set aside the Ipoh Winding Up Order. Hence the present appeal to this court.

[14] In a nutshell, the court summarises that following chronology of events:

G (a) Petition in the Companies (Winding-Up) Petition No. D2-28-372-2005 was filed on 26 May 2005 in Kuala Lumpur High Court (KL-D2), however this petition was not indicated in the Registrar of Companies search dated 11 July 2005;

H (b) the said petition was allowed by the KL-D2 court on 2 February 2007 but stayed due to mutual consent pursuant to s. 243(1) of the Companies Act 1965 by order dated 15 June 2007, because the debt in question was settled;

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- (c) in the meantime another petition was filed on 5 January 2007 at the Ipoh High Court and as at that material time there was no indication of any winding-up order made against the respondent based on the earlier D2 petition; A
- (d) the petition was allowed by the Ipoh High Court on 21 June 2007 after a stay order of the winding-up was granted on 15 June 2007 by the KL-D2 High Court because the debt in the D2 petition was settled; and B
- (e) after the Ipoh winding-up order was made the file of the case was transferred to Kuala Lumpur High Court (KL-D8) on request made by the official receiver as the respondent's registered office was in Kuala Lumpur. C

Issues To Be Determined

[15] The issues to be determined by this court are as follows: D

- (a) on jurisdictional issues, whether the learned judge of the KL-D8 court has the jurisdiction to set aside the winding-up order earlier made and perfected by the Ipoh High Court; and E
- (b) on merit, whether the learned judge of the KL-D8 court was right when he set aside the winding-up order earlier made by the Ipoh High Court.

[16] In determining the second issue above, the following subsidiary issues need to be dealt with: F

- (a) whether the Ipoh Winding-Up Petition can validly be filed at the date when the D2 Winding-Up Petition in the KL-D2 High Court had earlier been filed but no winding-up order been made yet; G
- (b) whether the Ipoh Winding-Up Order can be granted by the Ipoh High Court after the D2 Winding-Up Order in the KL-D2 High Court had been stayed. H

[17] On the jurisdictional issue, this court is of the view that the learned judge of the KL-D8 court clearly has no jurisdiction to set aside or rescind a winding-up order earlier made and perfected by another High Court, in this case the Ipoh High Court on 21 June 2007. The KL-D8 court had already been *functus officio* and the matter is *res judicata*. Even if the decision of the Ipoh High I

- A Court in granting the winding-up order is wrong, it should have been dealt with by the Court of Appeal (on appeal by the respondent), but not to be set aside or rescinded by another High Court of concurrent jurisdiction.
- B [18] The above principle was stressed by the Court of Appeal in *Vijayalakshmi Devi Nadchatiram v. Jegadevan Nadchatiram & Ors* [1995] 2 CLJ 392.
- C [19] The Companies Act 1965 or the Companies (Winding-Up) Rules 1972 make no express provision enabling the High Court to set aside or rescind a winding-up order after it had been made and perfected. The scheme of the Act is such that an aggrieved party may under s. 253 of the Act appeal against a winding-up order, or apply to stay to proceedings under s. 243 of the Act altogether or for a limited time, under terms and conditions which the court thinks fit. (see: *Perdana Merchant Bankers Bhd v. Maril Rionebel (M) Sdn Bhd* [1995] 1 LNS 308; and *Sri Hartamas DVPT Sdn Bhd v. MBf Finance Bhd* [1991] 3 CLJ 2078; [1991] 1 CLJ (Rep) 436.
- D [20] In this respect, the court is in agreement with the learned author Derek French in his book “*Applications To Wind Up Companies*” – 2nd edn, at p. 289 para. 4.4.3 when he says:
- E A winding-up order is a final order. In subsequent proceedings in the winding-up, the Court will not consider whether the order was properly made; that can be considered only on an appeal against the order.
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- G The same principle was adopted and applied in *Re Michael P Georges Co Ltd* [1948] OR 78; *Re Reliance Properties Ltd* [1951] 2 All ER 327; *Re Overend, Gurney and Co Ltd, ex parte Oakes and Peek (No. 2)* [1876] 36 LJ Ch 413; *Re London Marine Insurance Association* [1896] LR Eq 176, *Re Cosmopolitan Life Association* [1893] 15 on PR 185; and *Re Mid East Trading Ltd* [1998] 1 All ER 577.
- H [21] On this issue alone, the appeal should be allowed and the order of the learned judge of the KL-D8 court dated 7 January 2008 be set aside.
- I [22] The next issue is whether the Ipoh Winding-Up Petition can validly be filed at the date when the D2 Winding-Up Petition in the KL-D2 High Court had earlier been filed but no winding-up order been made yet.

[23] In the present case, the D2 Winding-Up Petition was filed on 26 May 2005 and the winding-up order was made by the KL-D2 High Court on 2 February 2007; while the Ipoh Winding-Up Petition was filed in court on 5 January 2007. In other words, when the Ipoh Winding-Up Petition was filed in court, there is no winding-up order in existence against the respondent in any court. The KL-D2 Winding-Up Order was only made about one month after the Ipoh Winding-Up Petition was filed.

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[24] The learned judge of the KL-D8 was of the view that there cannot be more than one winding-up petition to be filed against the respondent at any one time and held that the Ipoh High Court Petition was wrongly filed.

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[25] With respect, this court cannot agree with the learned judge on this point. It is a settled legal principle that in law there is nothing against the filing of more than one winding-up petition against the same company at any one time. There is no leave required for the filing of the second and subsequent winding-up petitions if the company has not been wound up yet. However, the court must stress that at no time a company which has been wound-up can subsequently be wound-up again.

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[26] This matter concerning the position of several petitions for the winding-up of the same company was considered in *Re European Banking Company: Ex parte Baylis* [1866] LR 2 Eq 521 where Sir RT Kindersley VC, observed:

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However desirable it is to avoid a number of petitions being presented for the winding-up of a company, I am not aware of any rule having been established with a view to limit the number of them. But still every one of these petitions ought to be looked at separately upon its own merits as if it were the only petition presented.

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[27] The above proposition was adopted and followed by Dulat J in *Ladli Prasad Jaiswal v. Karnal Distillery Co Ltd* [1954] Comp Cas 77, where he held:

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It is not shown that this view has been departed from in the English Courts. There is thus no authority for concluding that the appellant's petition for the winding-up of this company is not maintainable because a previous petition by him of a similar kind is pending and has not yet been decided.

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- A [28] The above principle was accepted and followed by the Court of Appeal in *Maril-Rionebel (M) Sdn Bhd & Anor v. Perdana Merchant Bankers Bhd & Other Appeals* [2001] 3 CLJ 248, where it was held by Gopal Sri Ram JCA, *inter alia*, that:
- B I require no clearer authority for the proposition that more than one winding-up petition may be presented against a company. Of course, the provision of Rule 33 is available to a petitioning creditor. And if he does not take advantage of the rule to have him substituted for a lethargic petitioner, he may find himself out of pocket for his costs. But on no account is his petition bad in law.
- C Nor is it an abuse of the Court's process.
- D [29] The above authorities clearly support the findings of this court that the Ipoh High Court Winding-Up Petition filed on 5 January 2007 is valid in law, even though at the time of filing there was another winding-up petition earlier filed and pending in the KL-D2 High Court. No leave is required for such filing under s. 226(3) of the Companies Act 1965.
- E [30] The court will now deal with the last issue ie, whether the Ipoh Winding-Up Order can be granted by the Ipoh High Court on 21 June 2007 after the D2 Winding-Up Order in the KL-D2 High Court had been stayed on 15 June 2007 under s. 243(1) of the Companies Act 1965. In other words: what is the legal effect of a stay order on a winding-up order?
- F [31] In this case, the D2 Winding-Up Order was made by the KLD2 High Court on 2 February 2007 and later on 15 June 2007 was stayed by the same court due to mutual consent of the parties pursuant to s. 243(1) of the Companies Act 1965 because the debt in question was fully settled. The Ipoh Winding-Up Petition was
- G filed on 5 January 2007 and a winding-up order was granted on 21 June 2007 (six days after the D2 Winding-Up Order in the KL-D2 court was stayed).
- H [32] The learned counsel for the appellant submitted that the stay order granted by the KL-D2 court on 15 June 2007 had the effect of total discontinuance or termination of the D2 Winding-Up proceedings, as if there was no winding-up order against the respondent at all, and therefore on 21 June 2007, the learned judge in the Ipoh High Court was at liberty and correct in granting a
- I Winding-Up Order against the respondent.

[33] In the present case, the KL-D2 Winding-Up Order was stayed wholly by consent, the debt was fully settled the KL-D2 Petition has now outlived its purpose. It has the effect of being totally discontinued or terminated. In law, the effect of such a stay order was clearly narrated by NH Chan JCA in the case of *Vijayalakshmi Devi Nadchatiram v. Jegadevan Nadchatiram & Ors* [1995] 2 CLJ 392 (at pp 395-396) as follows:

The effect of an order to stay proceedings under the winding-up order altogether after a winding-up order has been made is a total discontinuance or termination of the winding-up proceedings. In Jowitt's *Dictionary of English Law* (2nd Ed) under 'Stay' at pp 1701 – 1702, after stating that the term 'stay of proceedings' can mean a total discontinuance of an action, it says this: '... but in strictness it is only accurate when a decree or judgment has been given, for in such a case the suit or action cannot be dismissed, because the Court has adjudicated on it, and therefore all that can be done is to stay proceedings under the decree or judgment .. the stay operation of an order means that the order which has been stayed would not be operative from the date of the passing of the stay order.'

[34] The same principle was laid down in the case of *Krextil Holdings Pty Ltd v. Widdows* [1974] VR 689, in that the order of a stay of the winding-up, if expressed in unlimited terms (as in the present case), would put an end to the winding-up process and the respondent company can thereupon resume the conduct of its business and affairs as if no winding-up existed at all. If proceedings in the winding-up are stayed by order of the court, any duty of the official receiver to send report ceases. (see: *Halsbury's Law of England* (4th edn Reissue) para 1528).

[35] Now, the question is: can the Ipoh High Court make a winding-up order against the respondent after the KL-D2 Winding-Up Order was stayed wholly?

[36] The above authorities are clear indicators that the answer to the above question is in the affirmative. The Court of Appeal's decisions in *Vijayalakshmi Devi Nadchatiram v. Jegadevan Nadchatiram & Ors* (*supra*) and *Maril-Rionebel (M) Sdn Bhd* (*supra*) are very clear on this issue and are binding on the High Court. The learned High Court judge (KL-D8) should have followed those decisions.

A Conclusion

B [37] The above consideration leads the court to only one conclusion ie, the decision of the Kuala Lumpur High Court (KL-D8) on 17 January 2008 ought to be reversed because the learned judge has failed to appreciate the legal effect of the stay order in the D2 petition granted by the KL-D2 court, which totally terminated the winding-up order against the respondent. Consequently the Ipoh High Court Winding-Up Order on 21 June 2007 was correctly granted and valid in law.

C [38] In the circumstances, this court unanimously allowed the appeal with costs of RM1,000 to the appellant and deposit to be refunded to the appellant. The decision of the learned judge of the Kuala Lumpur High Court (KL-D8) is set aside and the decision of the learned judge of the Ipoh High Court is restored, so that the record will show that the respondent is wound-up as of 21 June 2007.

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